EMPLOYMENT TRIBUNALS

Claimant: **Mr C Corker**
Respondent: **Berneslai Homes Limited**
Heard at **Leeds ET** **On:** **15 and 16 February 2024**

Before: **Employment Judge Brain**

Representation
Claimant: **Mr D Bunting, Counsel**
Respondent: **Ms C Widdett, Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The complaint of unfair dismissal brought pursuant to the Employment Rights Act 1996 fails and stands dismissed.
2. The complaint of wrongful dismissal brought pursuant to the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994 fails and stands dismissed.

REASONS

Introduction and preliminaries

1. At the conclusion of the hearing (late on the afternoon of 16 February 2024) the Tribunal reserved judgment. Reasons are now given for the judgment that the Tribunal has reached.

2. Berneslai Homes Limited is an arm's length management organisation. It was incorporated in December 2002. It is responsible for managing social housing on behalf of Barnsley Metropolitan Borough Council. It has a responsibility for managing over 18,000 properties and providing landlord services to council tenants in Barnsley.

3. Christopher Corker worked for Berneslai Homes Limited. His principal statement of written particulars of employment is in the hearing bundle at pages 107 to 112. This was issued after the claimant obtained a promotion to the position of housing management officer. We can see from the letter in the bundle at page 113 that

this was with effect from 24 October 2016. The claimant held the position of housing management officer (which the Tribunal shall refer to from time-to-time as "HMO") from that date until the end of his employment. The principal statement of written particulars (at page 108) gives the claimant's commencement date as 8 April 2002.

4. The claimant was dismissed from his employment on 14 December 2022. He was dismissed without notice. The hearing before the Tribunal on 15 and 16 February 2024 was to decide upon the claimant's complaints of wrongful dismissal (arising out of the respondent's decision to terminate the contract of employment without notice) and unfair dismissal.

5. This case benefited from a case management preliminary hearing which came before Employment Judge Jones on 2 August 2023. He identified that (in addition to the complaints of unfair dismissal and wrongful dismissal) the claimant was pursuing claims under the Equality Act 2010 and a claim for holiday pay. Employment Judge Jones gave case management directions.

6. The matter returned to the Tribunal on 27 October 2023 at a public preliminary hearing. This came before Employment Judge Ayre. The hearing had been listed by Employment Judge Jones to:

   6.1. Determine whether the claimant was at the material time a disabled person for the purposes of section 6 of the Equality Act 2010.

   6.2. Consider the claims and issues following the provision of further information and an amended response.

   6.3. Consider whether any complaint or allegation should be struck out or made the subject of a deposit order.

7. In the event, counsel instructed by the claimant at that hearing (who did not appear at this final hearing) confirmed that the Equality Act 2010 complaints and the holiday pay claim were withdrawn. Employment Judge Ayre promulgated a judgment dismissing those complaints following withdrawal. This left the unfair dismissal and wrongful dismissal claims for determination.

8. The following were called to give evidence on behalf of the respondent:

   8.1. Katherine Allott-Stevens. She is head of estates at Berneslai Homes Limited. She (together with Tony Griffiths, one of the two housing management group managers) investigated the issues which arose out of the claimant's conduct and presented the management's case at the subsequent disciplinary hearing.

   8.2. Kulvinder Sihota. She is interim executive director of core services for Berneslai Homes Limited. She chaired the disciplinary panel following which the claimant was dismissed.

   8.3. David Fullen. He is an executive director of customer and estate services for Berneslai Homes Limited. He was a member of the panel which heard the claimant's appeal against dismissal.

9. The Tribunal also heard evidence from the claimant.

Findings of fact

10. The Tribunal will now turn to the factual findings. Following the findings of fact, the Tribunal will set out the relevant issues and the relevant law. The Tribunal's conclusions will then be given.

11. The claimant gives a brief description of his role as an HMO in paragraph 8 of his witness statement. There was no challenge to this description by Ms Widdett when the claimant was cross-examined. It appears to be common ground that the claimant's description of the HMO's responsibilities is accurate. He said, "In my role as an HMO, I was given a geographical area where I was responsible for ending tenancies, inspecting properties during and at the end of tenancies, monitoring tenants, dealing with disputes between neighbours, dealing with any issues which may arise at any of the properties and general estates management. I was essentially the first port of call for the tenants."

12. Within the bundle, at pages 340 to 344, is a job description for the role of HMO. The Tribunal was not taken to this document by counsel. The purpose of the post (at page 340) is responsibility "for delivering a proactive, reassuring, practical, and visible customer focused tenancy and estate management service and make a real difference to our customers and the communities that we manage." Thirteen duties and responsibilities are listed at page 341. The first of these is, "to deliver a highly visible, effective and proactive tenancy and estate management service." The third is responsibility "for the day-to-day patch based void management of properties and work with partners and teams to ensure properties are let as soon as possible to achieve key performance targets."

13. The line management chain is set out in the diagram at page 340. The HMO reports to a senior housing management officer who in turn reports to a housing management team leader. The claimant's direct line management report was David Graham. In the management hierarchy, above the housing management team leaders sit the two housing management group managers. One is in overall charge of Barnsley East and one in charge of Barnsley West: Barnsley is split into two districts for these management purposes.

14. The "void management of properties" referred to in the job description is in reference to a part of the termination process. This is described in paragraphs 11 to 13 of the claimant's witness statement. Again, this appears not to be in dispute as it was not subject to any challenge in cross-examination. The claimant said this:

"(11) There was a process in place when dealing with terminations of tenancies. Ordinarily, the termination would come through on Sharepoint with the printouts of this being passed to the HMO. The HMO would then make efforts to contact the tenant to confirm the termination and agree the date of departure.

(12) If the tenant could not be contacted, then the property would be passed to the void team who would clear the property out within four weeks of instruction. The void team would bring the property back to standard after a tenancy, they would clear out any remaining property, carry out any repairs and change the locks if required. The HMO would then obtain the keys from the void team and arrange for the property to be re-let.

(13) When it came to putting a property to void, the HMO would seek authority from their immediate manager. In my case, this was Dave Graham. There was no formal policy in place for dealing with the void of properties when keys had not been returned following a formal termination as there was a presumption that tenants would return the keys accordingly. There was however a policy in place for the abandonment of tenancies. The lack of a real policy was why everything was run through my line manager Dave Graham."

15. Mrs Allott-Stevens explained more about the void policy when invited to do so by the Tribunal. She explained that where a tenant gives notice to leave a property, then the normal expectation is that arrangements will be made for the keys to be handed to the HMO at the expiry of the notice period. Where the keys are handed in, then the respondent will access the property to bring it up to "void standard". This means essentially tidying the property and doing any necessary repairs for the next tenant. Where belongings are left behind after the keys are handed in then, as Mrs Allott-Stevens explained, photographs and an inventory will be taken, and the respondent will then follow the procedure in section 41 of the Local Government (Miscellaneous Provisions) Act 1982. This requires the local authority to serve notice requiring the outgoing tenant to collect property by a specified date failing which the property will vest in the local authority on that date.

16. Mrs Allott-Stevens said that where the tenant fails to hand the keys in, then the housing management officer should attempt to contact the tenant. She explained that the keys are required so that the respondent can legally terminate the tenancy. Her account is accepted. It appeared to be agreed by Mr Bunting. There was no challenge to what she said.

17. The voiding procedure which takes place at the end of a tenancy lies at the heart of this case. The issues which ultimately led to the claimant's dismissal arose out of the termination of tenancies at 16 and 18 Pleasant View, Cudworth, Barnsley.

18. The proximate cause of the respondent's investigation into the claimant's conduct was a call made by the claimant to Lee Dickinson, a senior housing management officer, on 11 August 2002. It is not in dispute that the claimant had taken a call that day from the widow of the tenant who had lived at 18 Pleasant View. She had telephoned the claimant to complain that the tenant's belongings had been cleared from the house. (The widow was not herself a tenant and did not live with the tenant at 18 Pleasant View, as will be explained later). Mr Dickinson in turn contacted Darren Asquith. He was one of the two housing management group managers employed by the respondent. (The other was Mr Griffiths as was mentioned in paragraph 8.1. Mr Asquith and Mr Griffiths have both since left the respondent).

19. Mr Asquith then reported the matter to Ms Allott-Stevens. In paragraph three of her witness statement, she said that the claimant had said to Mr Dickinson "that he'd received a call from the deceased tenant's relative concerning the disposal of the deceased tenant's property, and there had been "a major fuck up" as property belonging to a deceased tenant had been disposed of."

20. That the claimant had referred to the situation as "a major fuck up" was not in dispute. The only challenge to paragraph 3 of Mrs Allott-Stevens' witness

statement was that there was no attribution by anyone of blame on the part of the claimant in Mr Asquith's report to her.

21. Mrs Allott-Stevens says in paragraph 4 of her witness statement that, "Mr Griffiths was allocated the incident to investigate further". This culminated in the management investigation report at pages 205 to 216 of the bundle. (The Tribunal will go through the process leading to the report. The Tribunal observes that the report contained over 30 appendices running to around 160 pages. Most if not all of these are within the bundle. It would have made for an easier point of reference if the report had been copied into the bundle as a whole or at least the appendices had been cross-referenced in a schedule. The failure to do either of these created difficulty for the Tribunal).

22. A very helpful timeline was set out within the investigation report. This is at page 206 of the bundle. We can see from this that the tenant of 18 Pleasant View gave notice on 4 July 2022 to end the tenancy on 1 August 2022. Sadly, on 28 July 2022 the tenant died. The timeline records that on 1 August 2022 "Informed that the tenant had passed away." It is not clear from the timeline at page 206 to whom the information was passed regarding the tenant's death. The Tribunal was informed that the tenant's widow telephoned Barnsley Connect to relay the sad news. Barnsley Connect is the name of the telephone contact system operated by the respondent. Ms Widdett accepted that this was in effect the personification of the respondent as far as the tenants are concerned. Upon that basis, it is right to say that the tenant's widow informed the respondent of the tenant's death on 1 August 2022.

23. That day was of course the date upon which the notice which had been given by the tenant expired. The late tenant and his widow had married shortly before his death. As has been said, the widow did not in fact live with the tenant at 18 Pleasant View.

24. Having been allocated to investigate the incident, Mr Griffiths met with the claimant on 18 August 2022. The claimant was accompanied by Mr Dickinson. Notes of the meeting are at pages 115 to 120.

25. The notes were signed as accurate both by the claimant and Mr Griffiths on 5 December 2022. It is noted at page 120 that additional passages were added to the notes at the request of the claimant who returned them approved subject to those amendments on 30 November 2022. In evidence given in crossexamination, the claimant accepted the accuracy of the notes (as amended by him).

26. The meeting was held under section 5 of the respondent's disciplinary policy and procedure. This is in the bundle at pages 291 to 312ac. Section 5 is applicable where an initial allegation arises, and a manager considers that an employee's conduct may justify disciplinary proceedings. The policy therefore caters for an initial investigation at which a manager may determine the appropriate course of action.

27. At the interview held on 18 August 2022, the claimant said that he had been on holiday from 4 July to 18 July 2022. Therefore, he had no dealings with the matter until after his return to work. He picked up the information about the matter on his return to work that the keys were due to be handed in on 1 August 2022.

28. The claimant was then asked by Mr Griffiths what checks he had carried out to try to trace the outgoing tenant after the keys had not been returned on 1 August. The claimant said that he had checked the office post box and tried the telephone contact numbers on a couple of occasions to no avail.

29. The claimant then said in answer to question 4 (page 116) that he informed Mr Graham that the keys had not arrived. The claimant is recorded as saying that

    Mr Graham "responded by saying if it has terminated give the tenant until tomorrow (2/8 – [2 August 2022]) and if not handed in then change the locks." This was repeated in answer to question 8 at page 117. In answer to question 9, the claimant said that he raised an order on 2 August to bring the property to void standard. The claimant informed Mr Griffiths (in answer to question 11) that the property was cleared using two skips. One was filled on 5 August and the second on 11 August 2022.

30. In reply to questions 14 and 15, the claimant said that there is no standard written procedure issued by the respondent to be followed where a tenancy terminates, and the keys have not been returned by the tenant. In answer to question 15, the claimant said that he had ordered a lock change and did not "ask for the keys returning as I felt I had done sufficient checks to treat as a routine void where the property is cleared as part of this process." In answer to question 16, the claimant said that he had not carried out an inspection of the property on lock change to complete an itinerary of the belongings stored there. The claimant replied that he did not feel this was necessary "as it was a routine void".

31. The claimant was then asked, at question 18, whether he had followed a similar process on other occasions. He replied, "yes at 16 Pleasant View where I changed the locks and did not do an inventory. Prior to this I received text messages from the outgoing tenant saying he would hand the keys in and there was nothing of value in the property. The keys were not handed in and subsequently the lock change was arranged as part of the routine sap order as with 18."

32. The claimant said (at question 19) that he would not follow the process under section 41 of the 1982 Act which he viewed as applicable only where a tenant is evicted. He also said that the respondent's absence and abandonment process was not applicable in the circumstances.

33. It is not in dispute that there is no written procedure to be followed in the circumstances which face the claimant on 2 August 2022. The written absence and abandonment process policy referred to by the claimant at the investigation meeting of 18 August 2022 was not made available to the Tribunal.

34. The additional notes incorporated on 30 November 2022 were to the effect that the tenancy termination for 18 Pleasant View had not been saved on "Northgate" (which is the respondent's case management system) until after the termination date of 1 August 2022. Further, Mr Griffiths confirmed in the additional notes that effectively no forwarding address was on the system. This had also been noted by the claimant (in answer to question 2) as he said that the details of the forwarding address were in fact the same as the outgoing address. (The system will default to the same address where there is no forwarding address).

35. Mrs Allott-Stevens says in paragraph 7 of her witness statement that a discussion then ensued between Mr Griffiths, Mr Asquith and her about the next steps. There was concern about the claimant's handling of the termination of the tenancy at 18 Pleasant View. Further, during the initial investigation it had also come to light that the tenant's property at 16 Pleasant View had also been disposed of. This too was a cause for concern. Mrs Allott-Stevens says that consideration was given to suspending the claimant. It was thought that a transfer to another department would be a more appropriate course of action. There was no challenge to Mrs Allott-Stevens' account of her team's considerations after the initial investigation meeting with the claimant. The Tribunal therefore accepts her evidence. In the event, the transfer did not take place because the claimant reported sick on 24 August 2022. He was absent from work due to ill health until 24 October 2022.

36. The day before the claimant's ill health absence commenced, Mr Griffiths sent the claimant an invite to a management investigation meeting. The letter, dated 23 August 2022, is at pages 121 to 122. The claimant was invited to an investigation meeting in connection with the following allegations:

- A potential serious breach of the Berneslai Homes code of conduct as a result of the following:
- Failure to follow the absence/abandonment procedure.
- Failure to follow the section 41 procedure.
- Clearing of the contents of 18 Pleasant View Cudworth prior to visiting the property to take an inventory.
- Not taking appropriate action that would have prevented the need to have the locks changed.

37. The respondent commissioned an occupational health report for the claimant. This is dated 22 September 2022 and is at pages 143 to 145 of the bundle. The opinion of the specialist practitioner in occupational health is that the claimant has "a complex medical/health presentation." There is reference to him having post-concussion syndrome. This arose out of an incident which occurred during the claimant's holiday in July 2022. The occupational health practitioner opined that the claimant was not yet fit for work or fit to participate in formal investigatory or other work-related meetings. She estimated that the claimant was "likely to require another four to five weeks of medical leave, possibly longer as medically advised." (The Tribunal interposes at this stage to observe that Mr Bunting confirmed in closing submissions although it was raised as an issue in the disciplinary and appeal proceedings, the claimant's health was not being advanced as mitigation before the Tribunal in the unfair dismissal complaint).

38. It was resolved to continue with the management investigation during the claimant's absence. As explained by Mrs Allott-Stevens, it was agreed that an interview of the other housing management officers in both the Barnsley East and Barnsley West teams would be of assistance in gaining an understanding of the organisational knowledge of the process followed in circumstances where a tenancy had terminated but the keys had not been returned.

39. The HMOs' responses are in the documents to be found at pages 128 to 142 and 152 to 154 of the bundle. The HMOs were all asked the same questions. They

were all asked what they would do in circumstances where a tenancy was due to terminate, and the keys had not been returned. The Tribunal shall not go through each of the answers individually. It is right to say, in summary, that the HMOs said that they would endeavour to contact the outgoing tenant from the information available to them from the respondent's systems. They would check with their team leader before changing the locks. They would then go to have a look at the property to see if it was empty after the lock change. If belongings remained in the property, then the general view was that the notice process under section 41 of the 1982 Act would be followed.

40. In the circumstances, the Tribunal accepts what was said by Katherine AllottStevens in paragraph 11 of her witness statement that the evidence collated by

Mr Griffiths "demonstrated that the standard process was well-known, and that housing management officers would make further investigations prior to bringing a property to void standard."

41. It was suggested by Mr Bunting that the HMOs had recently undergone training prior to giving their statements to Mr Griffiths and that they were effectively reciting the procedure which they had been taught at the training event. It was not disputed by Mr Bunting on behalf of the claimant that the training event had taken place on 12 October 2022. The interviews of the HMOs conducted by Mr Griffiths took place on dates in September 2022. Mrs Allott-Stevens' evidence was that the responses were then typed up and sent to the individuals to confirm, sign and return. (We can see that all the responses were in fact returned after the date of the training event on 12 October 2022).

42. Mrs Allott-Stevens fairly accepted that if the HMOs had been in receipt of training such as that imparted on 12 October 2022 this would be bound to influence the answers given in reply to Mr Griffiths' questions had they been interviewed by him afterwards.

43. It was put to Mrs Allott-Stevens that the respondent's disclosure in this case had been deficient. She accepted that the matter had generated a lot of internal management correspondence and emails which were missing from the bundle. The Tribunal asked Mr Bunting whether he had any application to make in the light of Mrs Allott-Stevens' answer. Mr Bunting replied that he was content to rely upon his cross-examination of the respondent's witnesses.

44. Emails from Mrs Griffiths to the HMOs would (or at any rate may) have confirmed the date upon which the several statements were sent to them for signature and whether this was before or after the training event of 12 October 2022. The claimant was, of course, absent from work through ill health when the training event took place on 12 October 2022. Plainly, he did not attend it, nor was he sent any of the training materials.

45. When the claimant gave evidence in cross-examination, it was put to him by Ms Widdett that he knew that the correct process in these circumstances was to inspect the property after changing the locks and take an inventory if any of the tenant's personal belongings remained at the property. As we shall see, the claimant accepted, when he gave evidence at the disciplinary hearing held on 14 December 2022 that this was the standard process. The Tribunal refers in particular to the answers given by the claimant to questions from Mrs

AllottStevens at page 273 of the notes of the disciplinary hearing (which start at page 236). He confirmed his knowledge of the process before the Tribunal.

46. As the claimant knew of the process which was described by the other HMOs notwithstanding that he had not attended the training on 12 October 2022, it is credible (in the Tribunal's judgment) that the HMOs also knew it. This makes credible the possibility that they were interviewed in September 2022 prior to the training event. That the HMOs' statements were signed after the training event does not render it any less credible that they were simply describing the procedure to be followed in circumstances such as that faced by the claimant on 2 August 2022 notwithstanding that they had (by the time they signed the statements) received the training. After all, the claimant described much the same process, notwithstanding his absence from the training event.

47. The Tribunal agrees with Mr Bunting that it is unsatisfactory that the respondent appears to have given incomplete disclosure. However, the claimant elected not to make a specific disclosure application. The Tribunal therefore must make an assessment based upon the material before it. The Tribunal finds that the HMOs were describing the standard process to be followed in such a circumstance when interviewed by Mr Griffiths in September 2022, a process of which the claimant was well aware as confirmed in the evidence which he gave before the disciplinary procedure in December 2022 and before the Tribunal on 16 February 2024. Even if the Tribunal is wrong on this and the HMOs were interviewed after 12 October 2022, the claimant's usual practice was to adopt the process as described by them anyway.

48. Mr Griffiths also investigated the circumstances which pertained at 16 Pleasant View. He wrote to the tenant on 7 September 2022 (pages 124 to 127) following an investigation undertaken by him following the tenant's complaint.

49. Mr Griffiths found that the claimant had texted this tenant on 18 July 2022 to say that the tenancy was not due to terminate until 7 August 2022. The tenant had turned up at the property on 2 August 2022 intending to clear out the property. The tenant discovered that the void process was already being carried out and some of his personal belongings had already been removed. Mr Griffiths accepted that the text sent to the tenant by the claimant was in error as it gave an incorrect date. An offer of compensation was made to the tenant.

50. The claimant returned to work on 24 October 2022. He was suspended from his duties that day. The notes of the suspension meeting are at pages 158 to 161. Mr Griffiths chaired the meeting on behalf of the respondent. The claimant attended and was supported by a work colleague.

51. Mr Griffiths informed the claimant that the investigations into the issues around 16 and 18 Pleasant View Cudworth were being continued. Mr Griffiths asked the claimant for any comments. The note (which has been signed by the claimant as accurate) said in reply that he "had changed the locks with his manager's permission." This was in reference both to 16 and 18 Pleasant View and is consistent with what had been said by the claimant at the initial assessment meeting held on 18 August 2022.

52. It is of some significance that at neither of the meetings of 18 August or 24 October 2022 did the claimant go on to say that he had proceeded to void the properties with Mr Graham's permission or on Mr Graham's instruction. Ms

Widdett asked him why he had omitted mention of Mr Graham instructing him to void the property. The claimant said that he was unable to say why this had not been mentioned. The claimant added that he thought he was being scapegoated.

53. Mr Griffiths wrote to the claimant on 27 October 2022 (pages 163 and 164) to confirm the terms of the claimant's suspension.

54. The claimant's mention of scapegoating is in reference to significant adverse publicity which had been generated by the circumstances pertaining to 18 Pleasant View. At page 345 of the bundle is a copy of an article which appeared in the Barnsley Chronicle on Friday 26 August 2022. The newspaper article reported the sad passing of the tenant with metastatic lung cancer on 28 July 2022. The tenant was an army veteran. It appears from the Barnsley Chronicle article that he and his widow were married on 18 June 2022. It is very unfortunate from the point of view of the parties to this case that the case involved a worthy

and honourable individual and which therefore presented as a most sympathetic and newsworthy case in the local press. It is right to observe that the respondent suffered significant reputational damage consequently.

55. The next step was that the claimant was invited to attend a management investigation meeting. The letter of invite dated 1 November 2022 is at pages 165 and 166. The meeting was scheduled for 9 November 2022. The claimant was notified that the investigation was to be conducted by Katherine AllottStevens and Tony Griffiths to investigate allegations around the unauthorised clearance and disposal of the contents of the properties at 16 Pleasant View and 18 Pleasant View.

56. Notes of the management investigation meeting are at pages 169 to 181. The claimant was accompanied by the same colleague who had supported him at the suspension meeting. Again, the notes are signed as accurate by the parties.

57. The claimant mentioned (in reply to the third questioned asked of him) that Mr Graham had authorised the claimant to put the property (at 18 Pleasant View) straight to void and bringing it to void standards. He repeated this assertion in answer to the fifth question asked of him.

58. The seventh questioned raised the issue of the respondent's Vulnerability Protocol. This is in the bundle at pages 328 to 337. The Tribunal was not taken to this protocol in any detail. It is noted that the front page says that it is applicable where "something doesn't look right". It was noted (in the notes at page 172) that the claimant had visited 18 Pleasant View before the tenancy was due to end and saw a "Gas- no access" notification. Mrs Allott-Stevens asked the claimant whether he had considered the Vulnerability Protocol that something did not appear right in the light of that discovery. The claimant said that he had not and that "to be honest I thought he had abandoned [the property]". The claimant did accept that in addition to abandonment, it was possible that the tenant "could have been dead inside, in hospital or on holiday". Mr Griffiths then asked the claimant why he had not thought to do more to find out. The claimant reiterated he "just put it to void".

59. With reference to 16 Pleasant View, the claimant accepted that he may have made a typographical error in the text informing the tenant that the termination date was 7 August whereas it was in fact 1 August. He accepted that he had

made no checks to establish why the tenant had not handed the keys in on 1 August 2022. He maintained that Mr Graham had authorised him to change the locks at 16 Pleasant View and bring it to void standard.

60. In answer to the 21st question (recorded at page 177) the claimant confirmed that it was his case that Mr Graham had authorised putting both 16 and 18 Pleasant View to void on 1 August 2022 (albeit in two separate conversations).

61. Page 178 sets out a series of questions asked of the claimant which pertained both to 16 and 18 Pleasant view. The claimant was asked why an inventory of contents is taken before a property is cleared where the keys haven't been handed in. The claimant replied, "in case it comes back to bite you, like this has." The claimant candidly accepted that he was "not happy with my involvement". He accepted that the outgoing tenants and/or their families were liable to be upset by what had taken place. He maintained in answer to the 24th question (at page 178) that he was acting under Mr Graham's instruction but accepted that he was "the one who placed the order".

62. In reply to the 25th question at page 178, the claimant accepted that he could have done more. He could have arranged to see the outgoing tenant at 16 Pleasant View. He accepted that he could have obtained the keys to 18 Pleasant View and gone in to have a look. The claimant said, "with hindsight he could have done more".

63. There then followed questions (recorded at pages 179 and 180) about the respondent's "curiosity" company value. The claimant explained that his understanding of this was that if something does not look right, then it should be followed up. In answer to the 33rd question, the claimant said that with reference to 16 Pleasant View, "he should have gone to see him [the tenant] at his new address, he should have rung him again when the keys weren't returned, and he should have made an appointment with him and [get] the keys from him there and then." He went on to say that "regarding 18, he should have checked with the neighbours to see if they knew anything. He should have checked SharePoint and could probably have got a next of kin or even gone to number 1 … who was his brother who could have given him the details." The claimant added that "he could have got the keys after the lock change, visited to look, taken an inventory, could use a section 41, take photos." (In evidence before the Tribunal, the claimant observed that in fact the brother of the late tenant of 18 Pleasant View had sadly pre-deceased him).

64. The claimant signed the notes of the management investigation meeting held on 9 November 2022. We can see at page 181 that these were signed by him on 22 November 2022.

65. Mrs Allott-Stevens and Tony Griffiths then interviewed Mr Graham. The notes of their interview with him are at pages 182 to 189. It appears from the document at page 188 that Mr Graham signed the notes as accurate on 30 November 2022.

66. Mr Graham confirmed that before an order is placed to bring to void standard where the keys are not handed in, the expectation would be for an HMO to try to contact the outgoing tenant. The Tribunal refers to Mr Graham's replies to question 6 (pages 183 and 184). Where contact could not be made, and belongings remained in a property, he would expect the belongings to be put in

storage, a full inventory and photographs be taken and the procedure under section 41 of the 1982 Act invoked.

67. Mr Graham was then asked a series of questions about 18 Pleasant View. (These are at pages 184 and 185). Mr Graham recalled the case. He said that the claimant had told him that he had made efforts to try to contact the tenant as the tenancy date had passed but no keys had been handed in. Mr Graham said that the claimant had told him that he had made numerous attempts to make contact but to no avail. Mr Graham then said that he instructed the claimant to "give it another day, to see if the keys had come in and if they didn't, to arrange for a lock change." Mr Graham emphasised that he had authorised a lock change only. In reply to question 11 Mr Graham said, "All we discussed was a lock change, not void process, just a lock change which would mean we get the keys and go and inspect the property". He went on to say that in his 35 years of experience he has never cleared a property without inspecting it first.

68. Mr Graham was then asked a series of questions about 16 Pleasant View. He recalled the claimant discussing that property with him. (This is credible as it would be quite memorable for neighbouring properties to present much the same problem on the same day). Mr Graham said that the claimant had informed him

that the tenant at 16 Pleasant View was unreliable. He therefore authorised a lock change. He also authorised the clearance of the property at 16 Pleasant View upon the basis of the claimant's assurance that the tenant had given permission to clear the property. However, Mr Graham said that he would then, after the lock change, have expected the claimant to go and inspect the property and that should be done before any other steps were taken. Mr Graham said that "void orders weren't discussed."

69. Mr Griffiths and Mrs Allott-Stevens then discussed the evidence which had been collated. They took the view that there was sufficient evidence to pursue disciplinary allegations against the claimant. They prepared the management investigation report commencing at page 205 to which the Tribunal has already referred.

70. On 23 November 2022, the claimant was invited to attend a disciplinary hearing. The letter of invite is at pages 190 and 191.

71. The allegations put to the claimant were:

71.1. Unauthorised clearance and disposal of the contents of 18 Pleasant View, Cudworth without visiting the property to take an inventory/photographs and failure to comply with section 41 of the Local Government (Miscellaneous Provisions) Act. This has resulted in substantial loss of personal possessions and excessive stress being caused to the family of the outgoing (late) tenant; along with significant reputable damage to Berneslai Homes and [Barnsley] Council and the likelihood of significant compensation payments to a number of affected individuals. The clearance was ordered by yourself on 2 August 2022.

71.2. Unauthorised clearance and disposal of the contents of 16 Pleasant View prior to visiting the property to take an inventory/photographs resulting in compensation being paid to the outgoing tenant. This was ordered by yourself on 1 August 2022.

72. On 24 November 2022 Mr Griffiths prepared a transcript of text messages between the claimant and the outgoing tenant of 16 Pleasant View. These are at pages 192 and 193. These confirm that on 18 July 2022 the claimant texted the tenant giving an incorrect termination date of 7 August 2022.

73. On 28 July 2022 the claimant texted the tenant to ask him to confirm that he had moved his furniture out of 16 Pleasant View. The claimant said, "If you have I will put to void. That means you don't have to worry about the property being broken into etc". The tenant replied that he had "nowt [sic-nothing] worth taking anyway. Al [sic- I'll] hand keys in over weekend."

74. On 2 August 2022 the tenant texted, "What on earth has happened to my stuff. Gone to take rest today and hand keys in and that carpet was brand new. It's been skipped and my microwave and my kitchen stuff gone. I had till 7th for my termination date." The next day he texted, "I want reimbursing for that carpet, my kitchen appliances what's being launched art [sic- out]." The claimant replied, "You did say to me that the property was empty and there was nothing that you wanted." The tenant then said, "you asked me if there was anything worth breaking in for not that ya was gonna [sic- going to] launch my stuff in a skip."

    The tenant was then directed by the claimant to the respondent's customer services department, and he was informed that he may bring a complaint. As we know, he did so and around a month later an amount of compensation was agreed to be paid to him by the respondent.

75. On 25 November 2022, Mr Asquith prepared a statement. This is at pages 194 to 197. He said that he was told by Lee Dickinson, senior HMO in the North East housing management team on 11 August (who had in turn had received a call from Mr Corker that day) to the effect that he (Mr Corker) had placed an order to change the locks at 18 Pleasant View and carry out the usual void standard works. Mr Asquith says that "Lee explained that the outgoing tenant had recently passed away and the claimant's [widow] had recently extended the tenancy termination so it wasn't due to terminate until 21 August 2022."

76. Mr Asquith says that he then contacted the widow who confirmed that the property had been cleared of all belongings. She had discovered this following a visit to the property to collect some personal possessions in advance of the tenant's funeral to be held on 15 August 2022. The date of the funeral coincided with the tenant's birthday "so emotions were obviously high". (Although Mr Asquith does not give the date of the widow's visit to the property it appears likely that this was 11 August 2022 as that was the date upon which the claimant had received the call from her questioning the whereabouts of the late tenant's possessions).

77. Mr Asquith said that he had then visited the tenant's widow at her home on 12 August 2022. The meeting had been attended by several family members. Mr Asquith had assured them that a full investigation would be carried out. Mr Asquith said to the family that he had put in hand steps to contact the respondent's insurers. He acknowledged that sentimental items could not be replaced.

78. Mr Asquith then set out a chronology of events. This confirmed that the keys were due by 12 noon on 1 August 2022. The tenant's widow had contacted the respondent on 1 August 2022 to notify of his death on 28 July 2022. She completed an online form to extend the expiry date from 1 to 21 August 2022. She did this on 3 August 2022. The day before, on 2 August 2022, the claimant had made a request of Construction Services to change the locks and progress to void. Construction Services cleared and disposed of the contents of the some of the late tenant's belongings on 5 August 2022.

79. Mr Asquith observed that, "the loss of personal possessions has caused significant trauma and distress to the family as these are irreplaceable. Whilst the personal possessions cannot be replaced this will result in a significant financial settlement to the family. This doesn't reflect the reputational damage that has been done not only to the family directly involved but other relatives and friends alongside the wider reputational damage for example with the council and other key stakeholders given the significant impact and loss to the family."

80. Mr Asquith said that a "flag" should have been raised by the fact that the forwarding address on the system defaulted to 18 Pleasant View. He would have expected investigations to have been made before disposing of items. He concluded that, whenever possessions are left in a property and contact cannot be made with the tenant prior to disposal, the section 41 process should be followed, and 28 days' notice given."

81. On 29 November 2022 Mr Dickinson gave a statement (pages 198 and 199). He confirmed taking a call from the claimant at just after midday on 11 August 2022. Mr Dickinson said, "Chris [Corker] informed me that there had been a major mistake (actual wording was 'major fuck up') and the tenant's belongings from a property been disposed of. The [next of kin] had been on the phone to him and was wanting to speak with his manager." Mr Dickinson said that the claimant told him that he had discussed the matter with Mr Graham. Mr Dickinson said that "Chris also said that he had discussed placing the void works job on the system with Dave Graham and this is what was agreed."

82. Mr Dickinson also made enquiries as to the whereabouts of the tenant's belongings. It was ascertained that two skips had been used to empty the property. The first load was removed on 5 August 2022 and the second load on 11 August 2022. Mr Dickinson telephoned the relevant disposal site but unfortunately was informed that the skips had already been processed "and there was probably another 30 skips already on top of the skip that was processed this morning."

83. The date of the disciplinary hearing was confirmed in a letter sent to the claimant on 6 December 2022. This is at pages 202 to 204. The same two charges were confirmed as set out in the letter of 23 November 2022: see paragraph 71 above. The letter also confirmed the members of the disciplinary panel. The claimant was informed that Mrs Allott-Stevens and Mr Griffiths would present the management's case. It was the intention of management to call Mr Asquith and Mr Graham to give evidence.

84. The claimant was presented with the management statement of case which included the statements from the housing management officers, the senior housing management officers and housing management team leaders. These

are the statements to which reference was made earlier at pages 130 to 142 and 152 to 154. (The witness whose statement is at pages 128 and 129 did not wish to give evidence before the panel). The claimant was notified that four members of the housing management team would be available to answer questions at the panel hearing if required. In respect of the other five, the claimant was told that "if you wish to question any officers that are unavailable for the panel, please supply me with the detail so I can arrange for a written response."

85. The claimant was notified that a possible consequence of the hearing would be dismissal. He was informed of his right to be accompanied by a trade union representative or a work colleague. He was told of his right to submit his own documentary evidence and witness evidence.

86. In addition, the claimant was sent (amongst other things) the statements of Mr Dickinson, Mr Graham and Mr Asquith to which the Tribunal has already referred. The pack who also included the transcript of the text messages with the outgoing tenant of 16 Pleasant View and the front page of the Barnsley Chronicle of 26 August 2022.

87. The disciplinary hearing notes in the bundle commencing at page 236. These are lengthy. They run to page 282. The hearing was chaired by Amanda Bennett, head of HR. Mrs Sihota attended the hearing remotely. She lives around 180 miles from Barnsley and could not attend due to train strikes. However, Mrs Sihota was the decision maker.

88. The claimant attended without representation. The claimant presented three character witnesses. There was a short adjournment taken to read these.

89. The claimant confirmed that he was happy for the witness statements from the housing officers and their line managers to be taken as read. He did not ask them to be called as witnesses in order that he could question them.

90. Mr Graham was called as a live witness. He confirmed the contents of the witness interview at pages 182 to 189.

91. Mr Graham said to the panel (at page 247) that, "If the keys are handed in an order is put on the system to bring to void standard and advise where keys can be collected from which is usually the local housing office. If keys are not handed in checks to locate the tenant are discussed and authorised by the HMO to order a lock change and ask that the keys are returned to them so the property can be checked. I put that I have worked in housing for 35 years and that has been the procedure. What we have done all the time I have worked in housing."

92. Mr Graham was asked what further investigation he would expect an HMO to carry out in order to bring a property to void standard. He said (at page 247), "Try phoning, texting, email, visiting, checking housing file, checking Northgate, doing all attempts to contact the tenant before the keys come in. Then if satisfied, and all checks have been done, then only then would we authorise a lock change." He was then asked what would happen if a property was furnished? Mr Graham said, "Again try and contact the tenant. A lot of the time, while it is not often that people leave fully furnished property or like that, they don't usually leave all their stuff in properties, checks made, and if there is any expensive items left we use Elm Court for storage where we mark them up and they are put in storage at Elm

Court where we can take an inventory and take photos and basically that is so that they are safe in case the tenant returns."

93. Mr Graham confirmed that the claimant had asked permission to change the locks at 18 Pleasant View. He was then asked, "Do you think Chris could have understood this to be authorisation to progress with bringing the properties to void standard without having the keys returned first?" Mr Graham said, "no, normal practice is to go and have a look at the property, we discussed lock change and that was what we agreed to do."

94. The questioning then turned to 16 Pleasant View. Mr Graham said (page 249), "It was a bit odd because it was like having two in the same day but this one the keys, again had not come in but the tenant had promised to drop the keys off at Bow Street but he was a pretty unreliable tenant, he had not done it, he had moved to Elsecar [near Barnsley] and we struggled to get hold of him, he would only respond via text, he was very elusive and he had already been texting Chris saying that he had got hold of everything he wanted out of the property, and Chris asked for permission to change the locks which again he agreed to do that. I put that we didn't try chasing him to Wath Road because keys were overdue again, it was if he is elusive we would every journey got was wasted chasing round trying to get these keys tenancy had terminated so again we agreed to do a lock change. Maybe we could have gone to Wath Road and tried chasing him but again based on his unreliability of the tenant it was decided to do a lock change."

95. In relation to both properties, Mr Graham was asked what he would have expected of the claimant following the lock change. Mr Graham replied that he would have expected him to go and have a look in the property.

96. The claimant then had the opportunity of raising questions of Mr Graham. He asked (page 253), "Dave if you told me change the locks what would you have expected me to do?" to which Mr Graham replied, "Put a job on to carry out lock change."

97. The claimant then said (page 253), "So if you had said that to me that is a direct instruction that I would have done, I would not have put it to void. I would not have taken it straight to Construction Services, I would have put it to a lock change and got the keys and I would have checked the property, so why would you say that I did put it straight to void if you told me to change the locks I would have done exactly what you told me to do. I would not have done something else. I would have done that, and Kat's being my manager and she knows I would have done that." Mr Graham said, "I would have expected experienced officers to question that because it is not something we do so I would have expected it to be questioned." The claimant said, "I do not question a manager's decision, I just follow their instruction. If you are telling me what to do because I have come to you for an instruction for advice and you have told me again to change locks that is the order I would have placed. If you'd told me to put the properties to void I would have put the properties to void and that's what I did." Mr Graham observed that, "Without going in that property we don't know what's in that property so I said the discussion was around shall we do a lock change which is what I agreed to do." The claimant maintained that he had been told to put the properties to void. Mr Graham maintained that all that had been agreed was to "do a lock change". The claimant said that he "begged to differ".

98. Mrs Sihota asked Mr Graham whether there had been any other similar instances in the last 12 months or so. This line of questioning is recorded at pages 255 and 256. Mr Graham reported an instance where a tenant had died. The keys were retrieved from a neighbour. Housing management officers went into the property and did an inventory and took photographs. The property was not cleared until a family member had been contacted and who agreed to clear the late tenant's belongings. Mrs Sihota asked, "In terms of this situation where all the belongings had been put in the skip, apart from 16 and 18 [Pleasant View] it has not happened in your patch over the last 12 to 24 months?" Mr Graham replied that it had not.

99. Mr Asquith was then called as a witness. He volunteered to go through his statement. He did not read it out verbatim but looked to "pick out key points." (Mr Asquith's statement is that in the bundle at pages 194 to 197). The claimant had several questions for Mr Asquith. Mr Asquith confirmed that generally the claimant would act on instructions. Ms Bennett asked Mr Asquith whether it was normal practice to change the locks and carry out the void standard work at the same time. Mr Asquith confirmed this was not the case. He also said that it was the responsibility of the housing management office to check the property after changing the locks. Mrs Sihota also clarified her understanding of the process with Mr Asquith that the housing management officer should check the property for belongings before moving to void standard.

100. Mr Asquith confirmed that since the incidents involving 16 and 18 Pleasant View, a new process has been put in place whereby no property can be cleared without the authorisation and consent of the head of service or estates services or the head of repairs and maintenance. There has also been a review of the section 41 process.

101. At page 264 of the disciplinary hearing notes, mention was made of the staff conference held in 2022. This included a scenario-based activity where a tenant at a property could not be contacted. The claimant confirmed that he had engaged in the exercise which was aimed at promoting appropriate levels of curiosity in accordance with the respondent's values. The claimant conceded that he was "not sure" how he had demonstrated appropriate levels of curiosity when dealing with 16 and 18 Pleasant View and added that "he knows he didn't do as much as he could have done."

102. The claimant made a similar remark when taken to the Vulnerability Protocol (by reference to pages 265 and 266 of the notes). The panel's attention was drawn to the claimant's replies to the questions put to him in the management investigation meeting. The Tribunal has already referred to this (see paragraph 58 above).

103. The claimant was then afforded the opportunity to ask questions of management. He asked Katherine Allott-Stevens about the housing management away day of October 2022. He put it to her that the housing officers who had given statements had been influenced by their participation in training at the away day. Mrs AllottStevens said that she was "99.9% sure that the statements were taken before the meeting." Mr Griffiths and Mrs Allott-Stevens said that they could check the dates. We now know that the away day was held on 12 October 2022. The Tribunal has already made findings of fact that the housing manager's

officer's statements were taken prior to that date and that in any case the claimant was aware of the process to follow where the keys are not returned.

104. Neither the disciplinary nor the appeal panel were furnished with the corroboration of the date which was provided to the Tribunal on 16 February 2024. The approach both of Mrs Sihota and then of Mr Fuller appears to have been to accept what was said to them by Mrs Allott-Stevens.

105. The claimant then presented his case (page 271). With reference to 16 Pleasant View, the claimant said that he had texted the termination date to the outgoing tenant who confirmed that he would hand in the keys. He said that the tenant had been problematic. The claimant had given him a verbal warning about hanging rabbits from a washing line (which unsurprisingly had upset other tenants). It was also necessary for the claimant to have taken out a "gas warrant" because the tenant wouldn't co-operate in having his appliances services. (The Tribunal presumes that the claimant meant to refer to a gas injunction). The claimant said that when the keys had not been handed in, Mr Graham had given him permission to put that property to void standard.

106. Turning to 18 Pleasant View, likewise the claimant maintained that Mr Graham had said to him that the tenancy was "terminated, put it to void". He said that he would not place any such order without first speaking to his manager for clarification.

107. The claimant then mentioned the serious head injury which he had sustained while on his holiday in Cornwall in the first half of July 2022. He said that he was suffering from post-concussion syndrome. (The Tribunal observes that this had been confirmed by the respondent's occupational health physician as we saw at paragraph 37).

108. Mrs Allott-Stevens then took the opportunity of asking questions of the claimant. The questions asked of him by her are in the notes starting at page 273. Her first question was around an inconsistency in the claimant's case in that there was no reference in the management investigation meeting of 18 August 2022 that Mr Graham instructed the claimant to put the properties at 16 and 18 Pleasant View to void standard. This was in fact said twice in answer the fourth and eighth questions at pages 115 and 116.

109. Mrs Allott-Stevens asked the claimant to confirm that he was aware of the process and knew what he should have done. The claimant confirmed this to be the position. She then essentially repeated at the same point (at the top of page 274). She said, "So you know what you should have done but what you are saying is that Dave Graham, team leader told you to do something which is against what you know you should have done to be the correct process. I would even go so far as to say it goes against a piece of legislation that being section 41 of the Local Government Act 1982. So are you saying today you would carry out an instruction or an authorisation even if you knew this was against policy, procedure or even legislation." The claimant replied, "If I'm told to do something and my manager gives me a direct instruction and they are telling me to do it, they should know whether it is right for me to do or not." Mrs Allott-Stevens persisted with this line of questioning that the claimant knew that he "was going against policy, procedure and legislation, so why did you do it in this instance

when you wouldn't in any other?" The claimant replied, "I don't know. My manager told me to do it, so I followed his instructions."

110. Mr Griffiths then asked (also at page 274) why he would ask Mr Graham for permission to put the property to void standard when he knew the keys had not been handed in, given that he knew that the process was first to change the locks and then take an inventory. The claimant said, "I can't place an order for locks changing without permission from line manager or team leader, so I asked him what he wanted me to do."

111. At page 275, discussion turned to the claimant's head injury. Mrs Allott-Stevens pointed out that Mr Griffiths had asked the claimant whether the head injury had affected his ability to do his job to which the claimant replied that it had not. (As the Tribunal has observed, it forms no part of the claimant's case advanced in these proceedings that his conduct was mitigated by the head injury. The Tribunal of course accepts that the claimant suffered a serious head injury while on holiday in July 2022. The Tribunal has every sympathy for the claimant in enduring what appears to be a serious incident).

112. Ms Bennett then asked the claimant some questions (page 275). She reminded the claimant that he had said to management that he should have done more. She asked why he had not done so. The claimant replied, "I did check the properties before the terminations but I had just come back from leave and when you come back off leave your workload is high, lots of emails, voicemails, calls." Ms Bennett then asked him, "So due to your workload on your return from leave, that is why you did not do more?" The claimant replied, "Yes I know I should have done but that's hindsight." He also confirmed (at page 276) that he knew what the process was to be followed in these circumstances.

113. Mrs Allott-Stevens then summed up the management's case (pages 279 and 280). The claimant took the opportunity of making some closing remarks (page 281). He said that he had made an error in judgement but was clear that he had followed the instructions of Mr Graham. He said, "I apologise sincerely for my actions and take full responsibility for anything that I did but want to advise you

that I feel there are mitigating circumstances." By this, he referred to his poor mental health, and he identified a training need.

114. Mrs Sihota adjourned for deliberations. The hearing then reconvened. She gave her decision which was that the claimant should be summarily dismissed (at page 282).

115. She decided upon this sanction taking into account the claimant's experience as a HMO and his recognition that he "should have done more". She decided on balance that Mr Graham had not instructed the claimant to bring either property to void standard. She felt that the medical evidence in the form of the occupational health reports contained insufficient mitigation.

116. She told the Tribunal (in paragraph 39 of her witness statement) that she had preferred Mr Graham's account as she placed reliance upon the fact that the claimant had said at the investigation meeting of 18 August 2022 (in reply to questions 4 and 8) that Mr Graham had instructed the claimant to place an order for lock change. There was no mention of an instruction to put the properties to void standard. He had then changed his position at the investigation meeting of

9 November 2022 (in reply to question 21(h) at page 177). She was satisfied that Mr Graham had, in contrast, given consistent evidence which was corroborated by members of the housing management team.

117. She also gave evidence in paragraph 40 that she was satisfied that the claimant was aware of the standard process to be followed. She noted his replies to question 33 of the interview of 9 November 2022 at page 180.

118. Mrs Sihota was concerned by the reputational damage suffered by the respondent. She was unpersuaded by his mitigation that there was a training issue given that he acknowledged what he should have done in any case during the interview of 9 November 2022 and at the disciplinary hearing. She concluded (in paragraph 44 of her witness statement) that the claimant "did express some remorse, but the remorse was limited and I felt he did not show genuine regret for or understanding of the actual emotional harm that his actions had caused to the relatives of the tenants.

119. Mrs Sihota wrote to the claimant to confirm her decision. Her letter dated 19 December 2022 is at pages 233 to 235.

120. The claimant appealed against the decision to dismiss him. The appeal was acknowledged on 20 December 2022. On 5 January 2023, Mr Fullen invited the claimant to attend a disciplinary appeal panel hearing on 18 January 2023.

121. It was explained to the claimant that the management case would be presented by Mrs Sihota supported by Amanda Bennett. It was the intention of management to call Mrs Allott-Stevens and Mr Graham to attend the hearing as witnesses. The claimant was told of his right to be accompanied by either a trade union representative or a work colleague. He was reminded of his right to submit documentary evidence and to call witnesses. The grounds of the claimant's appeal were:

(1) That Mrs Sihota attended the disciplinary hearing virtually.

(2) There was a defect in the respondent's procedures as there was no written procedure in relation to void clearances and the disposal of tenants' belongings.

(3) Mr Graham had instructed him to void the two properties.

(4) That dismissal was too severe a sanction and that the disciplinary panel had not taken into account the medical reports and his mitigating conditions.

122. In preparation for the disciplinary appeal hearing, Mr Fullen noted that the claimant had previously been issued with a final written warning in 2007. This had long since expired. However, its significance is that the claimant did not have an entirely unblemished record of service with the respondent.

123. The notes of the disciplinary appeal hearing are at pages 367 to 392. The claimant was accompanied by a housing management officer. The appeal panel was made up of Mr Fullen and Sarah Barnes (head of customer services) and Nicola Scott (HR manager). She was also acting as advisor to the panel.

124. Mrs Sihota again attended the hearing remotely.

125. The claimant presented his appeal case. He expanded upon the four grounds of appeal referred to above. He also mentioned that he had heard about another incident which had taken place after the training held on 12 October 2022. The

claimant contended that a similar incident had taken place in Athersley (which is a district of Barnsley).

126. Mr Bunting confirmed that the claimant was not seeking to run an argument that he had been treated inconsistently with another employee who had done much the same thing. The claimant's case is that discussion of the Athersley incident was shut down by Amanda Bennett during the appeal hearing (in particular at pages 375 and 385). As Mr Bunting put it, the claimant's case is that this was part of a "stitch up" of him.

127. Mr Fullen confirmed that he was aware of the Athersley incident from his day-today role. He was satisfied however that the section 41 procedure (carried out under the Local Government (Miscellaneous Provisions) Act 1982) had been followed in that instance.

128. The management statement of case was then presented by Mrs Sihota. She confirmed the reasoning as detailed within the outcome letter at pages 233 to 235. She disputed that her virtual attendance at the disciplinary hearing had any impact on the fairness of the process.

129. Ms Bennett and Mrs Sihota were given the opportunity of questioning the claimant. At page 371, Ms Bennett said to the claimant "I don't mean to be flippant, but would you jump off a cliff if [Dave Graham] asked you to. If you knew it wasn't right why not raise it with him as an experienced officer?" The claimant replied, "I know that it's been done like this for years and years, putting properties to void when no keys have turned up." Ms Bennett replied, "This is new evidence that you have raised today. You were asked at the hearing did this happen before and your answer was no. Statements from colleagues were all consistent with this process." The claimant replied, "Yes after the away day and training".

130. Amanda Bennett then asked the claimant about the inconsistency in his accounts. The Tribunal has already mentioned the replies given by the claimant to questions 4 and 8 in the initial assessment meeting of 18 August 2022. These are at pages 116 and 117 and in which the claimant says that he was instructed by Mr Graham to change the locks with no mention of made of putting the properties to void standard. Ms Bennett also put to the claimant that at the suspension meeting held on 24 October 2022 the claimant referred to having changed the locks with his manager's permission with again no mention of being

given an instruction to put the properties to void standard. The Tribunal refers to page 159. It was put to the claimant by Ms Bennett that accordingly he had said three times that Mr Graham had instructed him to change the locks at the properties with no reference to bringing them up to void standard before he changed his account at the investigation meeting held on 9 November 2022.

131. The claimant denied that he had given an inconsistent account. At page 374 he said, "I have never lied. If I did wrong I would put my hand up. I know what I was told to do. I don't care what anyone says or any statements. I feel I am a scapegoat."

132. The panel then took the opportunity of asking the claimant questions. Upon the issue of the format of the disciplinary hearing (with Mrs Sihota attending remotely) the claimant said that he "prefers face to face." Mr Fullen said that accordingly, "This is only a preference, not a detriment." The Tribunal refers to page 376.

133. The claimant questioned the statements from the housing management officers. He maintained that their statements may have been influenced by the training which they had had subsequently. This issue was in fact picked up when the panel had the opportunity of asking questions of Mrs Allott-Stevens. She confirmed the change of process whereby senior management would authorise clearances. This was said at page 384. She maintained that the away day at which further training was given was held on 12 October 2022. This is also mentioned at page 384. Mrs Allott-Stevens said that "This was a learning exercise and done as a result of these significant events. It is considered good practice after an event investigation and to make sure we have assurance that people know what they should do and mitigate it not happening again. Following it everyone appeared to know what to do."

134. Mr Graham was also called to give evidence as a witness at the appeal hearing. His evidence was much the same as at the disciplinary hearing. He maintained that he had agreed only to a lock change as he "would not know what was in the property so could not say to put to void." His view was that the claimant was seeking to blame him for the incidents. The claimant was given the opportunity of questioning Mr Graham. The claimant simply put to Mr Graham, "If you told me to change the locks I would have. But what you said in the office is a lie."

135. After hearing closing submissions from Mrs Sihota and the claimant, Mr Fullen and the panel adjourned to consider matters. After an adjournment, Mr Fullen presented the panel's decision. The conclusions upon the claimant's grounds of appeal were:

(1) Hybrid working is common practice. While the claimant said that he would prefer a face-to-face meeting there was no evidence that such had a detrimental impact upon matters.

(2) As an experienced officer, the claimant knew what steps should have been taken by him once the keys had not been handed in at the properties. The process to apply in such circumstances has been in place for a number of years with no changes (until the recent innovation of additional sign off by senior management). The panel concluded that there were insufficient attempts made to contact the outgoing tenants or the next of kin (in the case of 18 Pleasant View).

(3) The panel preferred the evidence of Mr Graham to the claimant. They were also satisfied that the housing management teams' witness statements had been taken in advance of the training exercise of 12 October 2022.

(4) The panel rejected the claimant's case that the sanction was too severe. Their judgment was that there was an irretrievable breakdown in the relationship between the parties. The claimant's appeal was therefore rejected.

136. The following evidence was given by the claimant in cross-examination:

(1) It was not the claimant's normal practice to put a property straight to void standard immediately upon the keys not being handed in without first checking the property.

(2) The claimant said that he had dealt with the non-return of keys on probably a hundred occasion. Only in respect of 16 and 18 Pleasant View had he followed the process which he did in early August 2022.

(3) He accepted that significant reputational damage had been caused to the respondent.

(4) He accepted that he should have followed his usual process and disregarded Mr Graham's instructions. The claimant accepted that Mr Graham's instruction was (on his case) unusual. He should have questioned it and pushed back on it.

137. That concludes the Tribunal's findings of fact.

The relevant law

138. The Tribunal now turns to a consideration of the relevant law. The Tribunal will start with a consideration of the relevant law applicable to the unfair dismissal claim. There is no dispute that the claimant has the right to complain of unfair dismissal. This is a right given to employees by section 98 of the 1996 Act. The claimant has sufficient continuity of employment (as required by section 108) to pursue the claim.

139. There is also no dispute that the claimant was dismissed. Accordingly, the issue to which the claim gives rise is that in section 98 of the 1996 Act. It is for the respondent to show that the reason for the claimant's dismissal is one falling within section 98(1) and (2) of the 1996 Act.

140. The respondent primarily relies upon the claimant's conduct as a permitted reason for his dismissal. This is a potentially fair reason by section 98(2)(b). In the alternative, the respondent says that there was in any case a substantial reason open to them of a kind such as to justify the dismissal of the claimant. This was upon the basis that the claimant's conduct destroyed the relationship of trust and confidence between the parties.

141. It is well established by case law that where an employee is dismissed because the employer suspects or believes that they have committed an act of misconduct, then in determining whether the dismissal is unfair the Tribunal has to decide whether the employer entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. This involves three elements. First, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, it must be shown that the employer had in their mind reasonable grounds upon which to sustain that belief. Thirdly, the employer at the stage at which they formed that belief must have

carried out as much investigation into the matter as was reasonable in all the circumstances of the case. Authority for this proposition may be found in British Homes Stores Limited v Burchell [1978] IRLR 379 EAT. (There is no burden of proof upon the employer in respect of the second and third parts of the test)

142. In Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT the question arose as to the proper approach that Employment Tribunals should take once the Burchell test was satisfied. The question that then arises upon satisfaction of that test is whether the dismissal of the employee fell within the range of reasonable responses. By section 98(4) the determination of the question of whether the dismissal is fair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the

employee and shall be determined in accordance with equity and the substantial merits of the case.

143. In Iceland Frozen Foods, the Employment Appeal Tribunal held that in applying section 98(4) the Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Employment Tribunal) consider the dismissal to be fair. In judging the reasonableness of the employer's conduct an Employment Tribunal must not substitute their decision as to what was the right course to adopt for that of the employer. In many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another might quite reasonably take another. The function of the Employment Tribunal is to determine whether in the circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.

144. The range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to all the procedural and substantive aspects of the decision to dismiss a person from their employment for a conduct reason. Authority of this proposition may be found in Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA.

145. Not dissimilar considerations apply to substantial reason dismissals. It is for the employer to show a genuine and reasonable belief in the circumstances pertaining said to constitute the substantial reason for the dismissal. The employer must show that they had a substantial reason for the dismissal and the Tribunal must then be satisfied that the employer acted reasonably in all the circumstances both procedurally and substantively and that the decision to dismiss the employee for the substantial reason was one that fell within the range of reasonable responses taking into account the size and administrative resources of the respondent and the equity and substantial merits of the case.

146. Should the employee be found to have been unfairly dismissed, then the Tribunal will deal with issues of remedy. Assuming that re-employment is not an issue (and in this case the claimant did not tick the relevant boxes to indicate this to be his wish – see page 15 of the bundle) the Tribunal will consider monetary remedy. This can include a consideration of the claimant's conduct which may impact upon the basic award and the compensatory award (which are the two kinds of monetary award which generally the Tribunal may order upon a successful unfair dismissal complaint).

147. In Nelson v BBC (No 2) [1979] IRLR 346 CA it was held that in determining whether to reduce an employee's unfair dismissal compensation on grounds of conduct the Tribunal must make a finding that there was culpable and blameworthy conduct on the part of the employee. It must be held then to be just and equitable to make a reduction to the basic and/or compensatory awards on account of that conduct. Further, in the case of the compensatory award, it must be determined that the conduct had caused or contributed to some extent to the employer's decision to dismiss the employee.

148. At merits stage, the Tribunal's focus is upon the employer's conduct in dismissing the employee. At remedy stage, the focus shifts to the conduct of the employee where that is an issue. Findings of fact are therefore necessary about the conduct in question at remedy stage, whereas at merits stage the consideration in an unfair dismissal complaint is about the reasonableness of the employer's belief in the permitted reason in question.

149. This segues into the issues which arise upon the wrongful dismissal complaint. Again, the test is objective – it is not enough for the employer to argue reasonableness of belief that the employee's conduct was repudiatory. It is necessary to make findings of fact to decide whether the employee was wrongfully dismissed upon the basis that their conduct was in repudiation of the contract of employment such that the employer was entitled to bring the contract to an end without notice.

150. The employer therefore must prove that the misconduct in question was committed. It is not enough to apply the unfair dismissal test (in misconduct cases) of whether the employee reasonably believed that the employee had so acted. In British Heart Foundation v Roy [UK EAT/0049/15] HHJ Langstaff put the matter in these terms:

(1) Whereas the focus in unfair dismissal is on the employer's reasons for the dismissal and it does not matter what the Employment Tribunal thinks objectively probably occurred, or whether, in fact, the misconduct actually happened, it is different when one turns to the question either of contributory fault for the purposes of compensation for unfair dismissal or for wrongful dismissal. There the question is, indeed, whether the misconduct actually occurred.

(2) In a claim for wrongful dismissal the legal question is whether the employer dismissed the claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily. An employer will only be in that position if the employee is themselves in breach of contract and that breach is repudiatory.

151. Unfair dismissal is a claim which arises from statute (principally the 1996 Act). It is in essence a claim by the employee that the employer has not behaved reasonably in deciding whether to dismiss. The employer may act reasonably in dismissing the employee even if the employee is not liable to be summarily dismissed at common law for being in fundamental breach of the contract. Unfair dismissal law focuses (at least when deciding upon the merits of an unfair dismissal claim) upon the employer's conduct when dismissing the employee: by looking at the reasonableness of the employer's belief in the grounds relied upon for dismissal and the procedure adopted. So, the employer may reasonably believe the employee to be guilty of misconduct (and dismiss fairly) whereas on the facts an Employment Tribunal may find that the employee was not guilty of the offence for which they were dismissed (and thus uphold a claim of wrongful dismissal). The converse may also apply. The Tribunal may find that the employee was liable to summary dismissal on the facts and that the wrongful dismissal claim fails but that the dismissal was unfair for procedural reasons or dismissal was outside the bands of reasonable responses.

152. In Tydeman v Oyster Yachts Limited [2022] EAT 115 HHJ Taylor said that the term "conduct" in section 98(2) did not necessarily import the common law

concept of "gross misconduct". A common law dismissal for gross misconduct is only one factor to be considered and is not determinative. No contractual analysis is required upon an assessment of an unfair dismissal claim unless there is an allegation of breach of a contractual term.

153. The question of the degree of misconduct sufficient to constitute a repudiatory breach can give rise to difficult issues. There is no rule of law that stipulates that a degree of misconduct that will justify a summary dismissal. Cases of summary dismissal typically involve dishonesty, disobedience, or incompetence on the part of the employee. Whether there has been a repudiatory breach remains a contract-based test at common law, but one tied to the widespread development of the implied term of trust and confidence. The conduct in question must be of sufficient seriousness to undermine the relationship of trust and confidence between employer and employee. To constitute a repudiatory breach of the implied term of trust and confidence the conduct must be of such gravity to justify summary termination.

154. In cases of momentary negligence, it has been said that the emphasis should be on the nature and seriousness of the negligent act and not on the consequences of the act because to do otherwise would be to misuse hindsight. In Savage v British India Steam Navigation Co Ltd (1930) 46 TLR 294 it was said that in a negligence case the emphasis should be on the nature and seriousness of the negligent act, not on the consequences, because to do otherwise would be to misuse hindsight and could be unfair on the individual employee because the extent of the damage could be fortuitous and unforeseeable.

155. The misuse of hindsight could be unfair on the individual employee because the extent of the damage could be fortuitous and unreasonable. Where damage is extreme and newsworthy, an employer may find themselves under considerable pressure to be seen to take steps commensurate with the damage and make a scapegoat of an employee. In Jackson v Invicta Plastics Limited [1987] BCLC329 it was held that to justify an employee for a negligent act the employer would have to show that the employee's continued employment would be quite impracticable because of the harm they were likely to do to the employer.

Discussion and conclusions- application of the law to the facts as found

156. The Tribunal shall now set out the conclusions reached in this matter. The Tribunal shall start with a consideration of the unfair dismissal complaint.

157. The Tribunal concludes that the respondent had a genuine belief held upon reasonable grounds that the claimant had moved the properties at 16 and 18 Pleasant View to void standard without the authority of Mr Graham. This was a conclusion which was reasonably open to the respondent upon the basis of the material before both the disciplinary and the appeal panels.

158. Firstly, Mr Graham consistently maintained that the correct process where the keys are not handed in was to check a property and make enquiries before moving to void standard. After changing the locks in the event of the non-return of keys, an inspection would usually be carried out before moving the property to void standard and the statutory process under section 41 of the 1982 Act followed before disposing of tenant's belongings. Mr Graham's account was consistent and was also corroborated by those who work within the housing management team.

159. Secondly, the panels were entitled to reach the conclusion that the claimant had given inconsistent accounts. At the initial investigation meeting held on 18 August 2022 and at the suspension meeting he had made no mention of Mr Graham giving him permission to move the properties to void standard. This only featured at the second investigation meeting held on 9 November 2022.

160. Thirdly, the claimant confirmed both before the disciplinary and appeals panel that he knew the correct process, that could have done more to check the position, and that he lacked the necessary professional curiosity generally and as required by the respondent's Vulnerability Protocol.

161. In the Tribunal's judgment, the panels reached a reasonable conclusion that the evidence from the housing management officers had not been influenced by their attendance at a training event. It cannot be said to be outside the range of managerial prerogative to accept Mrs Allott-Stevens' assurance that the training away day was not until 12 October 2022. There was simply no reason to disbelieve her. For the reason to set out in paragraphs 44 to 47 above, the Tribunal concludes that it was a reasonable conclusion on the part of the panels to decide that the housing management officer's descriptions of the proper process was that which pertained in August 2022. Indeed, the claimant did not appear to dispute that to be the case.

162. The first and second Burchell tests are therefore satisfied. The respondent established a belief in the allegations raised against the claimant at the disciplinary and appeal hearings and had in their minds reasonable grounds upon which to sustain that belief.

163. The third issue is whether the employer had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. At the case management hearing which came before Employment Judge Ayre on 27 October 2023, the claimant's counsel (who did not appear before the Tribunal) withdrew the allegations of procedural fairness in paragraph 26(b) of the grounds of claim and confirmed that the claimant made no criticism of the procedure followed by the respondent in dismissing him.

164. This was the subject of some discussion during the parties' closing submissions. Mr Bunting confirmed that the only procedural issue raised by the claimant was that about the evidence given by the housing management officers. In the Tribunal's judgment, that evidence went to the issue of the reasonableness of the respondent's belief in the claimant's conduct as opposed to a matter of procedural unfairness.

165. However it is categorised, the Tribunal detects no procedural unfairness or substantive unfairness in the panel's reliance upon those witness statements. The claimant was given the opportunity of cross-examining the housing management officers who were prepared to attend the hearing. He declined the opportunity. He was also given the chance to raise written questions of those not attending. Likewise, that opportunity was not taken up by him. The claimant was also given the opportunity of asking questions about the proper procedure of Mr Graham and Mr Asquith.

166. The respondent has therefore satisfied the Tribunal that they have discharged the burden of proof upon them that they had a genuine belief that the claimant committed an act of conduct which is a permitted reason for the dismissal. The

Tribunal is satisfied that there were reasonable grounds for that belief after following a reasonable procedure. (There is no burden of proof as such upon the questions of reasonableness).

167. There were no procedural challenges other than that around the housing management officer's evidence. For the avoidance of doubt, the Tribunal detects no other procedural unfairness. The claimant was clear about the charges which he faced. He was furnished with sufficient notice of those charges and the evidence to be relied upon by the respondent. He was given the opportunity to be accompanied or represented and to call his own evidence and file his own documents. He was given a right of appeal.

168. The issue which then falls for consideration is whether the dismissal of the claimant was one that fell within the range of reasonable managerial responses in the circumstances. In considering this issue, the Tribunal must have regard (pursuant to section 98(4) of the 1996 Act) to the size and administrative resources of the respondent's undertaking and the equity and substantial merits of the case.

169. Although the Tribunal was not furnished with any evidence as such, the Tribunal takes judicial notice that this is a well-resourced respondent with significant administrative resources. The respondent has responsibility for managing around 18,000 properties in the Barnsley area. This is a significant responsibility.

170. As is only too apparent in this case, there is potential when dealing with tenants for things to go badly wrong. The newspaper article in the Barnsley Chronicle drew the attention of the local population to just such an event. As the claimant accepted, this was the cause of significant reputational damage.

171. This was something which the respondent could not afford to repeat. Given the equity and substantial merits of the case, it is the Tribunal's judgment that it did fall within the range of reasonable responses for this employer to form the view that it simply could not take the risk of continuing to employ the claimant who had committed two such grave errors in a short space of time (one of which had caused a significant reputational harm).

172. The Tribunal accepts that some employers may have been inclined to leniency. Some employers may have contented themselves with regarding this as a training issue, giving a warning to the claimant and monitoring his performance for a period of time. However, it would be a legally erroneous substitution of the Tribunal's view for that of the respondent to say that that would have been the proper course for the respondent to take in this case. It cannot be said that the decision to dismiss the claimant was one that fell outside the range of reasonable managerial prerogative. Accordingly, the complaint of unfair dismissal fails.

173. For the avoidance of doubt, the Tribunal would have held (if satisfied that the conduct ground had not been made out) that the claimant's actions were destructive of trust and confidence. In those circumstances, again dismissal of

the claimant was one falling within the range of reasonable management responses. The respondent simply could not afford a repeat occurrence of the reputational harm which it suffered.

174. The Tribunal now turns to the wrongful dismissal claim. This imports a consideration of factual findings about what happened as opposed to the reasonableness of the respondent's belief.

175. The Tribunal did not have the benefit of hearing Mr Graham. The Tribunal was told that Miss Widdett that he has retired from his employment with the respondent. While that may be the case, it does not of course prevent the employer from calling him to give evidence.

176. That said, it would be an error for the Tribunal to take the view that witness statements obtained by the employer during a disciplinary investigation should be disregarded in circumstances where those witnesses are not called to give evidence before the Employment Tribunal.

177. The Employment Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts. This is the effect of Rule 41 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) 2013. In Hovis Limited v Louton [EAT-2020-000973] it was held that a Tribunal fell into error when discounting witness statements obtained by the employer during a disciplinary investigation. The witnesses had seen the employee in question smoking in his lorry cab. This constituted gross misconduct under the employer's disciplinary procedure. The Tribunal preferred the employee's account that he was not smoking and failed to weigh in the balance the witnesses' accounts as they were not before the Tribunal to give evidence and they amounted to hearsay evidence. The Employment Appeal Tribunal remitted the matter to a different Tribunal to determine the wrongful dismissal claim.

178. It is right to observe that the Tribunal would have benefited in hearing from Mr Graham. The claimant has been prevented from the benefit of his counsel being able to cross-examine him. The respondent's reasons for failing to call Mr Graham were unconvincing. The Tribunal was left with the impression that little effort had been made by the respondent to get him to attend the hearing.

179. That said, it would clearly be a legal error (per Hovis Limited) to simply disregard what was ascertained from Mr Graham by the employer during the disciplinary proceedings. There was a signed witness statement from Mr Graham to the effect that he had not authorised the claimant to move the properties to void standards. Mr Graham appeared to give evidence at both the disciplinary and the appeal hearings. His evidence to this effect was not shaken under questioning from the claimant.

180. The claimant's credibility, on the other hand, is regrettably tainted by the inconsistencies in his accounts to which the Tribunal has referred already. The Tribunal refers to paragraphs 130and 158/159 above.

181. In evidence before the Tribunal, the claimant could not explain why he had only said that Mr Graham authorised moving the properties to void standard on 9 November 2022 when giving what was, by then, his third account of matters. The claimant was unable to give any explanation let alone a satisfactory explanation.

182. On balance, therefore, the Tribunal prefers the evidence of Mr Graham. His account of the proper procedure to be followed where the keys are not handed in

was indeed accepted by the claimant (before the Tribunal) to be correct. The claimant therefore effectively corroborated Mr Graham's account.

183. The claimant also accepted that he had followed the procedure as described by the housing management officers and Mr Graham on all but these two occasions. It must follow from this that the process as described by Mr Graham and the other witnesses is correct.

184. The Tribunal therefore finds as a fact that Mr Graham did not authorise the claimant to do any more than change the locks at 16 and 18 Pleasant View, Cudworth on or around 1 August 2022. The Tribunal finds as a fact that Mr Graham did not authorise the claimant to move the properties to void standard. This is corroborated by the acceptance by the claimant under questioning from the Employment Judge that Mr Graham's requests (on the claimant's account) were highly unusual and that in reality the claimant should have questioned Mr Graham's instruction.

185. The question then is whether in law the claimant's conduct was repudiatory of the contract with the respondent. There is of course no issue of any dishonesty or personal gain to the claimant in these circumstances. What is of relevance is the contract-based test tied to the development of the implied term of trust and confidence and whether the claimant's conduct was of sufficient seriousness to undermine the relationship of trust and confidence and such as to be repudiatory. What is of sufficient gravity to justify the respondent treating the conduct as repudiated by the claimant?

186. The Tribunal concludes that the claimant's conduct may be so categorised. It was such as to undermine the relationship of trust and confidence between employer and employee. The conduct was a grave breach of trust and confidence. In the Tribunal's judgment, objectively it was such that the continued employment of the claimant by the respondent would be impracticable because of the harm that the claimant was potentially liable to do in future.

187. The Tribunal has not found the wrongful dismissal question to be easy in this case. The Tribunal has had regard to the caution against hindsight per the British India Steam Navigation case. On any view, the circumstances pertaining to 18 Pleasant View were extreme and newsworthy. It was certainly suggested on the claimant's behalf by Mr Bunting that the employer was under pressure to find a scapegoat. This was the claimant's case at disciplinary and appeal stages.

188. The focus must therefore be on the nature and seriousness of the negligent act and not on the consequences. Otherwise, such brings with it a risk of the use of hindsight which may work an unfairness upon the employee. Indeed, the facts of the instant proceedings are a case in point.

189. Had the matter solely been about 16 Pleasant Avenue it is possible that the respondent may not have moved to end the contract of employment. It is surely not uncontroversial to say that the tenant of 16 Pleasant Avenue was a much less sympathetic individual than was the tenant of 18 Pleasant Avenue. The discarding of the belongings of the tenant at 16 Pleasant Avenue was not deemed in any way newsworthy. It did not feature in the local press (or at any rate the Tribunal was not directed to any such media attention).

190. This is of course to engage in speculation. We cannot know what the reaction of the respondent would have been had the claimant only made an error in voiding 16 and not 18 Pleasant Avenue. The point is that it would be wrong in law to conclude that the claimant was in repudiatory breach simply because his act attracted so much adverse publicity and financial consequences for the respondent. Such would be a misuse of hindsight.

191. The real issue is to focus upon the acts of the claimant. To disregard the respondent's procedure as he did and to not carry out even the most cursory of checks before moving the properties to void standards rendered the respondent a hostage to fortune. As has already been said, it was the misfortune of the parties to the that the claimant's neglect of his duties and the respondent's procedures had such serious consequences.

192. That really is the whole point at issue. Objectively, the claimant's acts were a repudiatory breach as they were destructive of trust and confidence. The respondent could have no faith in the claimant going forward that such an unfortunate episode would not be repeated. Such may come with equally drastic consequences as had occurred at 18 Pleasant View, Cudworth. Therefore, his actions destroyed trust and confidence and his continued employment was not practicable.

193. In the circumstances, the claimant's wrongful dismissal claim also fails and stands dismissed.

_____

Employment Judge Brain

_____

Date 15 March 2024